



Ms Jones

The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Creative Medical Management, Inc.

File: B-236266.2

Date: August 15, 1989

DIGEST

1. The General Accounting Office will not review a contracting officer's affirmative responsibility determination absent a showing of possible fraud or bad faith, or that definitive responsibility criteria in the solicitation were not met.
2. Allegation that awardee may have acquired proprietary information from former employee of the incumbent contractor involves a dispute between private parties which does not provide a basis for protest to the General Accounting Office.

DECISION

Creative Medical Management, Inc., protests the award of a contract to the low bidder, Orkand Corporation under invitation for bids (IFB) No. F05611-89-B-0206 issued by the United States Air Force Academy for medical examination of applicants.

The protester's first objections to the award to Orkand are based on that firm's alleged inability to perform. According to Medical Management, Orkand, which is alleged not to be a medical firm, does not have the finances, experience, staff, equipment or liability insurance required to successfully perform. The protester also questions the "viability" of Orkand's fee structure and expresses its doubt whether the protester is regularly engaged in the type of services required as specified in the solicitation.

Where, as here, the protester questions the low bidder's ability to perform the required services at the prices bid the challenge is to the contracting agency's duty to make an affirmative determination that the firm is a responsible

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contractor prior to making award. Keal Cases, Inc., B-233370, Jan. 12, 1989, 89-1 CPD ¶ 34. Because such a determination is based in large measure on subjective judgments which generally are not readily susceptible of reasoned review, an agency's affirmative determination of responsibility will not be reviewed by our Office absent a showing of possible fraud or bad faith on the part of procurement officials or that definitive responsibility criteria in the solicitation were misapplied. Bid Protest Regulations, 4 C.F.R. § 21.3(m)(5) (1988); TLC Sys., B-231969, Sept. 13, 1988, 88-2 CPD ¶ 238. No such showing has been made so we will not consider these contentions.

Further, the protester argues that Orkand was only able to bid for the services because of the assistance of a former employee of the incumbent. It questions whether the relationship represents a conflict of interest or possible violations of the prohibition against contingent fee representation or Orkand's certification of independent pricing. The allegation of conflict of interest which concerns the actions of a former employee of the incumbent contractor is beyond the scope of our bid protest function as it involves a dispute between private parties concerning business practices and relationships which is properly for resolution by the private parties through the courts, if necessary. Sublette Elec. Inc., B-232586, Nov. 30, 1988, 88-2 CPD ¶ 540. Further, Orkand's bid contains the required certifications of independent price determination and that it had not entered into any prohibited contingent fee arrangements. The protester has not produced any evidence that Orkand's certifications are false. Consequently, our Office will not conduct investigations for establishing the validity of a disappointed offeror's speculative allegations. Holsman Servs. Corp., B-230248, May 20, 1988, 88-1 CPD ¶ 484.

The protest is dismissed.

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For

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